

Thomas, Felicia

From: DeGering, Tracy
Sent: Monday, May 13, 2013 4:21 PM
To: (b) (6)
Subject: RE: Individual Permit:

Hi Don,

I am not an expert on the two forms, so if you continue to have specific questions, I can work on getting you in touch with someone who processes Individual Permit applications.

As I understand it (I am not an attorney), there are no provisions for “de minimis” activities under Section 402 of the Clean Water Act (CWA). The impact of the activity is not related to the legality of needing an NPDES permit, but rather that “pollutants” are being discharged into waters of the U.S. at all. I am personally unable to modify this, but if Congress were to, it could alleviate certain activities from being regulated.

I am, however, aware of revisions to the regulatory definition of “Discharge of Dredged Material” (please see: http://water.epa.gov/lawsregs/lawsguidance/cwa/dredging/upload/Tulloch_Conforming_Rule.pdf), but this addresses whether or not a permit may be required from the Corps of Engineers under Section 404 of the CWA. It does not modify the requirement to obtain an NPDES permit under Section 402 of the CWA.

I understand you were able to get in touch with Russ Holder of the USFWS and that he explained the ESA consultation process. I hope he was able to answer all of your questions. You may also find some helpful information in our Response to Comments document, available on our website at: http://www.epa.gov/region10/pdf/permits/npdes/id/small_suction_dredge_idg370000_rtc.pdf. This document responds to the various questions and comments we received during last summer’s 30-day comment period for this general permit.

Thank you,

Tracy DeGering | (208) 378-5756

U.S. Environmental Protection Agency
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From: (b) (6)
Sent: Friday, May 10, 2013 8:08 AM
To: DeGering, Tracy
Subject: Individual Permit:

Tracy,

I was unable to complete the form for the Individual Permit because I answered "No" on page 14 to questions A. through J.

Specifically question C. Is this a facility which currently results in discharges to waters of the U.S. other than those described in A. or B. above? (Form 2C).

OUTFALL means a point source.

POINT SOURCE means any discernable, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

POLLUTANT means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954 as amended [42 U.S.C. Section 2011 et seq.]) heat, wrecked or discarded equipment, rocks, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean A. or B.....

I am not intending to introduce anything "pollutant" or otherwise into the water in which I am intending to work a suction dredge. I am merely intending to bring material already located in the river to the surface and allow the "heavies" to settle out and return everything back into the river, not far from where it was excavated from.

Can you tell me what Scientific studies your agency has performed to determine that this activity is anything other than a de minimus activity? Can you issue a waiver to the NPDES?

I'll be on the telephone to the NMFB, the USFWS, and other alphabet soup agencies.

Don Smith